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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,721	11/12/2003	Gregory B. Altshuler	105090-207	7252
21125 7590 03/27/2008 NUTTER MCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604				
EXAMINER				
SHAY, DAVID M				
ART UNIT		PAPER NUMBER		
3735				
NOTIFICATION DATE		DELIVERY MODE		
03/27/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

doctet@nutter.com

Office Action Summary

Application No.

10/706,721

Applicant(s)

ALTSHULER, GREGORY B.

Examiner

david shay

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 21, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 23-25, 27-38 and 40-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20, 23-25, 27-38 and 40-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date December 21, 2007.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “interlock which operates in conjunction with said controls to disable operation of said sources unless said component is properly positioned to protect said selected portion”; the “diagnostic tool mounted on said mount”; and the “wireless connection” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claims 1-7, 9-15, 17-22, 24-28, 30, 31, 35-44, 46, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell or Alexander et al in combination with Altshuler ('813). Russell and Alexander et al teach a device as claimed except for the diagnostic sensor. Altshuler ('813) teaches the desirability of the use of a diagnostic sensor and a gel. It would have been obvious to the artisan of ordinary skill to employ the diagnostic sensor of Altshuler ('813) in the device of Russell, since this would control application of the energy to prevent damage to the skin; to employ the gel, since this provides index matching, and to employ a switching array formed of separate switches, since this is not critical; is well within the skill of one having ordinary skill in the art; and provides a predictable result, thus producing a device such as claimed.

Claims 8, 23, 29, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Russell or Alexander et al in combination with Altshuler ('813) as applied to claims 1-7, 9-15, 17-22, 24-28, 30, 31, 35-44, 46, and 47, and further in combination with Eckhardt et al. Eckhardt et al teach an irradiation device with sensors that do not allow the device to be actuated unless the device is properly positioned. It would have been obvious to the artisan or ordinary skill to employ the sensors of Eckhardt et al in the apparatus and method of Russell or Alexander et al, since Russell or Alexander et al discuss the need for protecting certain areas of the body from exposure, thus producing a device and method such as claimed.

Claims 32, 33, and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Russell or Alexander et al in combination with Altshuler ('813) as applied to claims 1-7, 9-15, 17-22, 24-28, 30, 31, 35-44, 46, and 47, and further in combination with Altshuler et al. Altshuler et al teach an irradiation device with diagnostic sensors that do not allow the device to

be actuated unless the device is properly positioned. It would have been obvious to the artisan or ordinary skill to employ the sensors of Altshuler et al in the apparatus and method of Russell or Alexander et al, since this prevents undesired damage to the skin, as taught by Altshuler et al, and in either case to employ a wireless connection, since this is not critical; is well within the skill of one having ordinary skill in the art; would enable the illuminator to be used without tethering the user to the controller, thereby providing greater mobility, official notice of which is hereby taken; and provides no unexpected result, thus producing a device and method such as claimed.

Applicant's arguments with respect to claims 1-20, 23-25, 27-38, and 40-47 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/

Primary Examiner, Art Unit 3735